IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision: 7.11.2006

State of Punjab Vs. Sarabjit Singh & others

CORAM: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. MS Sidhu, Sr. Deputy Advocate General, Punjab
for the appellant.

Mr. H.S. Sandhu, Sr. Advocate, assisted by G.S. Begol, Advocate, for the acquitted respondents.

Virender Singh, J.

Respondents Sarabjit Singh son of Tarsem Singh son of Mohan Singh, Sukhwinder Singh son of Bawa Singh son of Achhar Singh and Jaswinder Singh alias Binder son of Sardul Singh son of Dalip Singh, all residents of village Pattar Kalan were booked in a case FIR No.7 dated 11.1.1999 registered at Police Station Kartarpur (District Jalandhar) under Sections 302/201/34 IPC for allegedly committing the murder of Jaspal Singh son of Resham Singh (PW4) on the night intervening 10/11.1.1999 within the limits of village Bisrampur. All the three respondents were charged under Section 302 IPC read with Section 34 IPC whereas Sarabjit Singh respondent was also charged under Section 201 IPC. Vide impugned judgment of learned Additional Sessions Judge, Jalandhar dated 28.1.2002, they have earned acquittal. State of Punjab has

preferred the instant appeal against the impugned judgment which was admitted by this Court way back in August, 2000.

The prosecution case in brief can be depicted as under:-

On 11.1.1999 Ajit Singh son of Chanan Singh (PW3) had gone to his fields at about 2.00 P.M. and when he reached near his fields, he saw blood lying in one corner of the tubewell. A loi (woollen shawl) and certain playing cards were also scattered near that place. The dead-body was lying in the well. Ajit Singh met Sarvan Singh Sarpanch and went for lodging the report to the police when SI Ajmer Singh (PW10) met them at the Bus Stand. Ajit Singh PW made his statement Ex.PG on the basis of which the formal FIR was registered. A headless body was recovered from the well. Resham Singh father of the deceased and one Nirmal Singh reached the spot. Resham Singh identified the dead-body to be of his son from his clothes. Inquest report Ex.PE was prepared and thereafter the dead-body was sent for post-mortem examination. On 12.1.1999 the postmortem on the dead-body was conducted by Dr. Jasmeet Walia (PW2) who observed as under:-

> "A dead body of a moderately built and moderately nourished wearing navy blue jersey, green coloured sweater, green coloured T-Shirt, white vest, black pants, black check socks, mehandi coloured underwear with red piping. Black shoes and black leather belt. Head was severed at the level just 1 cm above monubrium sterni and not found alongwith the body. Rigor mortes and post mortem staining were present. Stab cuts on the clothes seen and signed on the vest. A tatoo mark PALA present

in the middle of right arm.

1. Head was absent at the level of about 1 cm above menubrium stern. Skin thickened and tracked with clean margins, s/c tissues, sub-cutaneous tissues, muscles, blood vessels, nerves, vertabrae, trachea, esophagus were cut and exposed.
2. A gaping wound measuring 9 cm x 7 cm present on the dorsum of right hand extending upto right wrist and Palmer surface of right hand. Muscles, blood vessels, nerves and tendons were cut.
3. A stab measuring 3 cm x 1 cm present on the right side of back of chest .2.5 cm from the midline and 24 cm below the blade of right scapula.
4. Another stab wound 1.5 cm x 1 cm present 3 cm below injury No.3 three cm away from midline.
5. A stab wound 1.5 cm x 1 cm present adjacent to spine 12 cm below injury No.4.
6. A stab wound 2 cm x 1 cm present 1 cm below injury No.5. 5 cm away from the midline.
7. 1 cm x 5 cm stab wound present 8 cm below the injury No.6, three cm away from midline. On further dissection and probing injury No.4,5,6 and 7 led to abdominal cavity.

Peritoneal cavity punctured at many places. Peritoneal cavity was full of water, blood and yellow materials. Stomach, small intestines, and liver found punctured. Thoracic cage full of blood and water. Right lung and left lung were full of water and blood.

The cause of death opined by the aforesaid doctor was shock and haemorrhage due to the injuries which were sufficient in the ordinary

course of nature.

Aforesaid S.I. Ajmer Singh had also picked up the bloodstained earth and Loi, identity card of the deceased from the spot and took them into possession vide recovery memo. Rough site plan Ex.PS was also prepared by the investigating officer. On 12.1.1999 service of police dogs were also availed for the search of the head but to no effect. Clothes of the deceased were also taken into possession after the postmortem report.

On 15.1.1999 Sarabjit Singh respondent was arrested and interrogated. On interrogation, he disclosed that he had kept concealed the head of Jaspal Singh alias Pala at some distance from the tubewell of one Ajit Singh. He also disclosed about the concealment of the Datar used by him. His disclosure statement Ex.PH was recorded and pursuant to that he got the head recovered from the concealed place which was taken into possession vide memo Ex.PJ. He also got recovered Datar Ex.P5 which was also taken into possession vide memo Ex.PK. Thereafter, the head was sent for postmortem examination and on 16.1.1999 Dr. J.S. Rattan (PW1) along with Dr. J. Walia conducted the postmortem examination on the head of Jaspal Singh, since deceased, and noticed the following injuries:-

1. From right side of face a gaping wound starting from right angle of mouth extending backwards upto the back of right Pinna, underlying sub-cutaneous tissue, muscles, blood vessels, nerves were exposed and softened. Thick dirty

pink coloured blood was present on the wound. Teeth of right maxilla beyond right lateral incisor were fractured.

2. An incised wound 6 cm x 1½ cm x 1 cm were present horizontally in the middle of occipital region of scalp.
3. An incised wound 8 cm x 1½ cm were present on occipital region of scalp 1 cm below the injury No.2.

The time elapsed between the injury and the death was immediate and between the death and postmortem was about seven days.

Sukhwinder Singh and Jaswinder Singh were arrested on 18.1.1999. On the disclosure statement of Jaswinder Singh, a scooter and Kirpan were got recovered from a concealed place. Similarly, on the disclosure statement of Sarabjit Singh respondent, a Datar and a head allegedly of the deceased was got recovered. The same were taken into possession vide separate recovery memos.

After completion of the investigational process, all the three respondents/accused were challaned in this case and charged as stated herein above.

The prosecution has examined the following witnesses in support of its case:-

PW1 Dr. J.S. Rattan,

PW2 Dr. Jasmeet Walia,

PW3 Ajit Singh son of Chanan Singh, the first informant,

PW4 Resham Singh son of Mehar Singh son of Gainda, father of deceased.

PW5 Jit Kaur wife of Resham Singh, mother of Jaspal Singh, deceased.

PW6 Tarlochan Singh son of Tara Singh, brother-in-law of Jaspal Singh deceased.

PW7 Ramji Halqa Patwari,

PW8 ASI Rattanjit Singh who had taken the head of Jaspal Singh for postmortem examination.

PW9 ASI Lakhbir Singh who had partly investigated the case. He had also arrested the respondents and effected the recoveries as stated in the preceding paras.

PW10 SI Ajmer Singh is the investigating Officer.

PW11 Head Constable Baljinder Singh has tendered his affidavit Ex.PU.

PW12 Devinder Singh son of Harbans Singh is a witness before whom the three respondents had allegedly made extra-judicial confession admitting their involvement in the commission of murder of Jaspal Singh.

PW 13 constable Pargat Singh has also tendered his affidavit Ex.PB.

The plea taken by all the respondents as emerges from their statements recorded under Section 313 Cr.P.C. was of denial stating that they have been falsely implicated in this case.

The learned trial Court while disbelieving all the material planks of the circumstantial evidence including the extra-judicial confession allegedly made by the respondents before aforesaid Devinder Singh had arrived at a definite conclusion that the prosecution has woefully failed to bring home guilt to the respondents beyond shadow of doubt.

We have heard Mr. M.S. Sidhu, Senior Deputy Advocate General, Punjab and Mr. H.S. Sandhu, Senior Advocate assisted by Shri G.S. Begol Advocate, appearing for the acquitted respondents. With their assistance, we have once again gone through the entire evidence and the other relevant documents very minutely.

Records reveals that the evidence led by the complainant is that on 9.1.1999 Jaspal Singh, since deceased, who was a carpenter, had left the house at about 8/9 A.M. but did not come back. Resham Singh (PW4), the father of the deceased had stated in his substantive statement that he did not make any effort to search Jaspal Singh under the impression that he might had gone to see relations and came to know only on 11.1.1999 that a headless dead-body was lying in the well of Bisrampur.

In order to show the plank of last seen, the prosecution has examined Jeet Kaur, the mother of the deceased who when stepped into witness box stated that on 9.1.1999 at about 9.00 A.M. when Jaspal Singh had gone to Kartarpur, at that time three persons (respondents herein) were standing outside. In her substantive statement she gave the nickname of all the three respondents. She then stated that Jaspal Singh had gone on a scooter.

The other material witness according to the prosecution is Tarlochan Singh son of Tara Singh (PW6) brother-in-law of the deceased before whom the recovery of the head was allegedly effected

pursuant to the disclosure statement of Sarabjit Singh alias Sahbi.

The prosecution lastly relies upon the testimony of Devinder Singh son of Harbans Singh (PW12), resident of Kot Kishan Chand, before whom all the three respondents had allegedly made extra-judicial confession apprising him that they had murdered Jaspal Singh on some simple matter. In his substantive statement he states that the respondents had approached him before the last Lohri at 6.30 P.M. meaning thereby that he wanted to connect the date and month. He further stated that after the respondents had made confession before him showing their involvement in the commission of murder, he asked them to approach him on the next day but they did not turn up and this is how he disclosed the said fact to SHO Ajmer Singh.

For dislodging the first plank of circumstantial evidence i.e. last seen, the learned trial Court has observed that the respondents belong to the same village and, therefore, their presence outside the house would not be enough to prove their involvement in the commission of the offence. It is further observed that Jeet Kaur had admitted in her statement that she had no suspicion against anybody. We do not find the approach adopted by the learned trial Court on this aspect to be erroneous.

The recovery of scooter and the weapon of offence has also been disbelieved by the learned trial Court on the ground that no reliance can be placed on the testimony of Inspector Lakhbir Singh (PW9) as

independent witness Baldev Singh who was joined by the prosecution, was not examined. With regard to the alleged recovery of weapons of offence and scooter, the trial Court returned the finding that the same does not connect the accused with the commission of the crime. We with the assistance of learned counsel for both the sides have once again re-appreciated the evidence on this aspect and find no perversity in the same.

One of the main circumstance on which the prosecution is relying heavily is the recovery of head and Datar allegedly effected pursuant to the statement of Sarabjit Singh alias Shabi. The said recovery has been disbelieved by the learned trial Court while entering into a detailed discussion in para 11 of the impugned judgment and we feel the necessity of reproducing the same as under:-

> "11. The next circumstance is regarding the recovery of head and datar alleged to have been got recovered by Sarabjit Singh accused in accordance with his disclosure statement. The evidence regarding this recovery is also not believable because it is most contradictory. According to Tarlochan Singh, independent person, who attested the disclosure statement and recovery memo the accused was interrogated in the Police Station whereas according to Inspector Lakhbir Singh and SI Ajmer Singh, the accused was apprehended in his house and then interrogated there rather SI Ajmer Singh stated clearly that on 15.1.99 Tarlochan did not meet him in police station and he met him near Railway Crossing, Kartarpur. Thus either Tarlochan Singh is not speaking the truth or Inspector Lakhbir Singh and SI Ajmer Singh are telling lies. Furthermore, according to Ajmer Singh, accused also disclosed that he had kept concealed datar

near the place of recovery but Lakhbir Singh and Tarlochan Singh have not deposed about the accused having suffered the disclosure statement regarding concealment of datar. This is glaring contradiction which casts doubt about the recovery of dead body and the datar. Furthermore, a perusal of the evidence of Tarlochan Singh shows that the accused was not interrogated in his presence and the police already knew about the head and the datar. PW6 Tarlochan Singh admitted that Thanedar told him that they had made inquiries from Sahbi who had disclosed about the same in his (witness) presence, meaning thereby that the accused had already disclosed the place about the head and datar in the absence of Tarlochan Singh. Tarlochan Singh also admitted that he did not remember the name of Thanedar who interrogated the accused. This circumstance shows that the accused was not interrogated in the presence of Tarlochan Singh. No other independent person was associated though the same were available because the accused was interrogated in village Pattar Kalan where there was no dearth of independent persons. Tarlochan Singh also admitted that so many persons had collected when the head was recovered. Furthermore, Tarlochan Singh is admittedly brother-in-law of the deceased and as such he had reason to support the prosecution version and since no independent corroboration is forthcoming, it is not safe to place reliance on the testimony of Tarlochan Singh and police officials. Moreover, the place of recovery is accessible to all and sundry. SI Ajmer Singh clearly admitted that the place from where head was recovered is accessible to all and sundry and similarly, place from where recovery of datar took place is also accessible to all and sundry. A reference to site plan Ext.PK/2 also shows that place of recovery is open and accessible to all and sundry and is situated near Kartarpur-Kapurthala metalled road. It is not the

> case of the prosecution that the head and datar were lying buried rather they were lying in the bushes in the open. Therefore, there is every possibility that the accused might have knowledge of the head lying there and he, therefore, cannot be held to have got recovered the same. In the case of Bakshish Singh Vs. The State of Punjab, 1971 Cri. L.J. 1452, it was held that recovery of dead body by police on information given by the accused on being questioned is not conclusive circumstance. In this view of the matter, I am of the opinion that evidence regarding the recovery of head and datar by the accused is not reliable and trustworthy and it cannot be held that the accused got recovered the head. Moreover, as already stated above, mere recovery of dead body by the accused is not sufficient to connect him with the murder."

After having re-scanned the evidence on record, we are of the considered view that the view taken by the learned trial Court is not at all erroneous which would call for taking a different view.

We are now left with another material plank of evidence i.e. extra-judicial confession allegedly made by the respondents before Devender Singh PW12. We have gone through para 12 of the impugned judgment in which while discussing the law on the reliability of extra-judicial confession, the learned trial Court has come to a categoric finding that aforesaid Devender Singh was not a reliable witness. We have once again gone through the entire statement of Devender Singh (PW12). In his substantive statement (cross-examination) he had stated that he had no relationship in village Pattar Kalan (village of the accused-respondents). He then stated that Sadhu Singh of Pattar Kalan was son of his mother's

sister but he did not know the name of mother of Sadhu Singh. He even could not tell the name of father of Sadhu Singh. He then stated that Sadhu Singh had died 15 years ago. He also did not know the other family members of Sadhu Singh. He also admitted that he did not know the father's name of the respondents. He was confronted from his previous statement where parentage of all the accused/ respondents were mentioned. The observation of the learned trial Court is that this witness was not an influential witness and so, there was no reason for the respondents to repose confidence in him. For arriving at the said conclusion, the learned trial Court has relied upon certain authorities. We find no flaw in the approach adopted by the trial Court in rejecting the evidence of aforesaid Devinder Singh.

It is settled law that in case of circumstantial evidence all the planks on which the prosecution is relying should be established independently by cogent and convincing evidence and all the facts so established when taken collectively should be a pointer towards the guilt of the accused.

The scope of interference by the appellate Court in the judgment of acquittal is very limited as held by their Lordships in a case ***Bhim Singh Vs. State of Haryana***, 2002 (10) SCC 461 observing thus:

> "Before concluding, we would like to point out that this Court in a number of cases has held that an appellate court entertaining an appeal from the judgment of acquittal by the trial court though entitled

> to re-appreciate the evidence and come to an independent conclusion, it should not do so as a matter of routine. In other words, if from the same set of evidence two views are possible and if the trial court has taken one view on the said evidence, unless the appellate court comes to the conclusion that the view taken by the trial Court is either perverse or such that no reasonable person could come to that conclusion or that such a finding of the trial court is not based on any material on record, it should not merely because another conclusion is possible reverse the finding of the trial court."

In another latest judgment of the Apex Court rendered in ***Kallu @ Masih and others vs. State of Madhya Pradesh***, 2006 (1) RCR (Criminal) 427, their Lordships while dealing with the scope of appellate Court in an appeal against acquittal observed as under:-

> "While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of doubt.

> Further if it decides to interfere, it should again assign reasons for differing with the decision of the trial court."

We after re-appreciating the entire case of the prosecution once again find no demonstrable perversity, infirmity or unreasonableness on any count warranting our interference in the judgment passed by the learned trial Court as we do not find any substantial and compelling reason for that.

Resultantly, finding no merit in the appeal of the State, the same is hereby dismissed.

(Virender Singh)
Judge

(A.N. Jindal),
Judge

November 7, 2006
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